IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10948 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAKIRHUSSAIN AABIDHUSSAIN KADRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10948 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged the detention order dated 2.9.2002 by which he is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) as a "dangerous person".

#. Along with the detention order, the detenu was served with the grounds of detention. In the said grounds, there is a reference about two criminal cases, which are filed under various sections of IPC. The authority, after having been satisfied about the illegal activities of the petitioner, has detained the petitioner under the preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, there is a delay in passing the detention order. He submitted that the last offence was registered against the petitioner on 12.7.2002 and the order of detention is passed after considerable time. It may be noted that, if really the illegal activities of the petitioner are required to be curbed, it was not necessary to wait for such a long time. It is also not mentioned in the detention order that as to on which date statements of the witnesses have been recorded by the detaining authority. For that purpose, learned advocate for the petitioner has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein in para 21, the Court observed as under.:

"In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am

to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

Learned advocate for the petitioner also relied upon the decision of this Court (Coram: H.K.Rathod,J) given in Special Civil Application No.13125 of 2000 wherein this Court has considered the aspect of delay in passing the detention order. This Court in para 9 has observed as under :

"In light of the observations made by this Court in two decisions and considering the facts that there was one month delay in passing the detention order from the last offence registered on 5th October, 2000 which remained unexplained and non-supply of the relevant documents which had been taken into account by the detaining authority while passing the detention order and in spite of the demand made by the petitioner, the same have not been supplied and therefore, it adversely affected the legal and fundamental rights of the detenu for making effective representation under Art.22(5) of the Constitution of India. Therefore, the order of detention dated 6th November, 2000 is required to be set aside."

#. Considering the fact of delay and considering the decisions of this Court referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 2.9.2002 is quashed and set aside. The detenu Jakir Hussain Aabid Hussain Kadri is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)